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Pupils

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Recommended Citation

Horack, Frank E. Jr., "Pupils" (1933). *Articles by Maurer Faculty*. Paper 2169.
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CHAPTER I

PUPILS*

Residence

Of the many situations which arise with respect to the relationship existing between the pupil and the school he attends, none seem to occur more frequently than those relating to tuition and transportation, and both in turn are largely dependent upon the question of residence. Residence, for school purposes determines most questions of right and liability to transportation and free tuition. The courts, however, will not insist that school residence is determined by the residence of the parents where to do so would unreasonably deprive a child of school privileges. Thus where it plainly appears that a child's residence in a school district is primarily for the purpose of having a home and not merely for the purpose of enjoying the school privileges of the district, he will be considered as having a residence in the district, though his parents do not.¹

Tuition

A recent study shows that every state has some provision in its school laws relative to the computation and collection of tuition for non-resident pupils.² The supreme court of South Dakota held³ that tuition could not be collected in a case where a girl remained in the district to complete her school work after her parents moved into another district, because the code provided that "a child shall be considered a resident of the school district in which his parents . . . resided at the time of the official enumeration of the last school census." In this case, the new school census not having been taken until after the girl graduated, the court held that her father's change of residence during the

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1 *Fangman et al. v. Moyers*, (Colo.), 8 Pac. (2d) 762 (1932).

2 *A Comparative Study of the Legal Aspects of Tuition Charges in the Public Schools of the United States*, by Harold L. Houle, University of Iowa Extension Bulletin No. 265 (1931).

3 *Independent School Dist. No. 1 of Springfield, Bon Homme County v. Bordewyk*, (So. Dak.), 241 N. W. 619 (1932).

interim did not affect her right to attend free of tuition.

Transportation

Most of the cases in this subdivision are concerned with the right and authority of the school board in relation to transportation of pupils, rather than with the right of a pupil to transportation in a particular case.

The growth of the consolidated school movement during the past quarter of a century has made the transportation of pupils one of the major costs of school administration.⁴ In the absence of express statutory authority, the courts are reluctant to sanction the transportation of pupils at public expense, and unless the authority to transport is clearly expressed, injunction will lie.

Transportation Under Statutory Delegation. Where school boards are authorized to transport pupils, the courts seem inclined to give a liberal construction to the statutes, if by so doing they can facilitate the attendance of pupils at school.

In Colorado, the supreme court of that state upheld a school board, authorized to transport pupils, in making certain cash payments to parents transporting their own children, even though they were transported out of their home district, because the school to which they were taken was near and on a better road than the one in their own district. However, the court declared that payments would not be warranted if pupils were taken to a private school.⁵ The fact that some of the pupils transported themselves was brought out, but not passed upon by the court. This question, however, arose in Kansas where a boy transported himself to school as the agent of his father, who claimed the statutory compensation provided to parents for transporting their children to and from school.⁶ The court held that this was permissible even when the son was operating an automobile in violation of the law.⁷

4 It is estimated that school transportation cost \$40,000,000 in 1926-1927. In Iowa, it amounted to 21.9 per cent of the total operating expenses for the consolidated schools of the state. See *Legal Aspects of School Transportation in the United States*, p. 149, by F. D. White, Ms. thesis, 1932, University of Iowa Library, Iowa City, Iowa.

5 *Stoops v. Hale*, (Colo.), 14 Pac. (2d) 491 (1932).

6 *Hildebrand v. School Dist.*, 136 Kan. 311, 15 Pac. (2d) 412 (1932).

7 The court held that the contract between the school and the parent was valid and that no objection could be raised to the contractual liability under it that the actor had committed unlawful acts in its performance.

It is certainly an unusual circumstance to find a parent receiving a cash income for sending his children to school.

In Georgia an injunction was sought to prevent a board from paying for the transportation of some children to a district other than that of their residence. Inasmuch as the statute authorized children to attend school in an adjoining county, if more accessible than the one in the county of their residence, the supreme court held that the board had as much authority to transport pupils from one district to another for school purposes as they have to transport them within their own district, because the statute, which authorized children to attend a more accessible school, declared that "provisions shall be made for such children just as for others".⁸

Financing Transportation Costs. When a board votes to provide transportation for pupils, it must be able to finance the project. Thus it was held to be an abuse of discretion in Kentucky for a board of education to create a consolidated district in which a large number of pupils would not be within reasonable walking distance of the school, unless transportation were provided, the Board being without authority to provide for transportation from the general funds without submitting the question to a vote of the people of the district. However, the court sanctioned the payment of transportation costs from the general fund for a consolidated school for colored children on the ground that the colored consolidated school was a part of the county school district, and that the conditions under which the board had the right to provide for transportation of pupils out of its general funds as laid down in sec. 4426a-11 were not present.⁹

The County Superintendent of Ottawa County, Oklahoma, had called two elections in a certain school district in 1931, for the purpose of submitting the question of public transportation of pupils to the voters. The proposition was defeated in both cases and he called a third election for July 10, 1931, for the same purpose. The supreme court of Oklahoma sustained an injunction forbidding the holding of the third election, because statute provided that the board must make its estimate of needs for the

⁸ *Fitzpatrick v. Johnson*, (Ga.), 163 S. E. 908 (1932).

⁹ *Knox County Board of Education v. Fultz*, 241 Ky. 265, 43 S. W. (2d) 707 (1931)

ensuing year on the first Tuesday of July. The court held that in this case it would be impossible to provide funds to defray the cost of public transportation if the election were held on July 10, 1931.¹⁰

In a Connecticut case,¹¹ the supreme court of errors held that when the board voted that transportation be provided, it became the duty of the town board of finance, upon submission of estimate, to include in its estimates and recommendations, a sum reasonably necessary to pay for the transportation. Otherwise, the refusal of the finance board would make it impossible for the town or its officers to carry out those duties imposed by statute or to carry out decisions of its officers in matters in which discretion had been expressly vested in them by law.

Powers of the Higher School Officers in Relation to Transportation of Pupils. Statutes sometimes provide that certain school officers may call an election to vote on the question of furnishing transportation to the pupils of the district;¹² or the school officer may be authorized to order that transportation be furnished when the board refuses or neglects to do so.

In New York, where a district meeting had decided adversely the question of furnishing transportation to certain pupils at the expense of the district, the interested parties appealed to the Commissioner of Education, who ordered the pupils transported at the expense of the district, and directed the board to levy a sufficient tax to pay for the same, if no funds were available. The trustees failed to carry out the order of the Commissioner. The Commissioner removed the trustees and called a special meeting to fill the vacancies. The new trustees again refused to provide transportation, and another meeting of the district was held in which the question was again defeated. Another appeal being made to the Commissioner, he again directed that transportation be forthwith provided as before, but the respondent failed or refused to carry out the order. Therefore, the problem for the court was not the validity of the Commissioner's orders, but the enforcement of them. The respondent urged that it was up to the Commissioner

10 *Dixon et al. v. Johnson*, (Okla.), 11 Pac. (2d) 477 (1932).

11 *Groton and Stonington Traction Co. v. Town of Groton*, (Conn.), 160 Atl. 902 (1932).

12 See *Dixon v. Johnson*, *supra*, footnote 10.

to enforce his own decisions, and that if his powers were inadequate, the remedy rested with the legislature and not the courts. The court held that the decision of the Commissioner had affixed upon the trustees the legal obligation to perform a public duty.¹³

Transportation Contracts. Two cases involving the right of the lowest bidder to a contract for transportation appear in the 1932 digests—one from South Carolina¹⁴ and the other from Indiana.¹⁵ In both cases the question turned on whether the board had to accept the lowest bid or whether it had discretion to determine who was the lowest responsible bidder. The supreme court in each state held that a wide discretion is vested in the board in determining who is the most responsible bidder, not merely the lowest bidder, and that this discretion should not be disturbed unless an abuse of discretion is clearly shown.

Statutes forbidding members of boards to be the beneficiaries of contracts which they participate in letting are very common. A member of a school board had been transporting pupils under a contract with the district for about four months, when the legislature passed an act declaring "that any contract with any member of a school board for the transportation of children or to drive a bus, shall be null and void". The supreme court of Arkansas held that for his services prior to the passage of the act referred to, the member was entitled to his pay, but not afterwards. The court held that the contract in its very inception was illegal on sound grounds of public policy, and his right to compensation was not referable to the contract, but to the services rendered.¹⁶

Judicial repugnance to the delegation of legislative and discretionary powers was reaffirmed in Louisiana,¹⁷ where a Parish school board had by resolution authorized a member to procure a driver for a bus for transporting pupils. The court held that the Parish school board was not liable on the member's contract.

The holder of a New York license to operate a commercial bus route objected to a school bus traveling over a part of his

13 *Crocker et al. v. Common School Dist. No. 8 of Town of Cohecton et al.*, 142 Misc. Rep. 525, 254 N. Y. S. 831 (1932).

14 *Hutto v. State Board of Education et al.*, *You v. Same*, (S. C.), 162 S. E. 751 (1932).

15 *Lee et al. v. Browning*, (Ind. App.), 182 N. E. 550 (1932).

16 *Ridge v. Miller, County Treasurer*, (Ark.), 47 S. W. (2d) 587 (1932).

17 *Johnson v. Sabine Parish School Board* (La. Sec. Cir., Sec. Div.), 140 So. 87 (1932).

route without holding a certificate of necessity and convenience. The court of appeals held that the school bus was not engaged in carrying passengers for pay within the meaning of the statute invoked, and that it is engaged in the discharge of a governmental function by a school district.¹⁸

Attendance Officers

The County Council of Jackson County, Indiana, refused to appropriate funds necessary to pay the salary of a school attendance officer and in an action in mandamus to compel them to do so they alleged that the law under which payment was sought was unconstitutional. This act was entitled "an act concerning the school attendance and the employment of minors, fixing penalties and repealing conflicting laws." This act, it was argued, was in conflict with Sec. 19, Art. 4 of the Constitution which declares "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title", as it embraces two subjects—compulsory school attendance and child labor. The supreme court of Indiana, however, held that the law was not in violation of the Constitution.¹⁹

Another case involving the payment of salary to a school attendance officer arose in Missouri.²⁰ In this case the chief point was whether the county court, after approving the appointment of an attendance officer could refuse to allow compensation for services rendered as such officer. Construing the statute defining the powers of the county superintendent in relation to the appointment of attendance officers, the supreme court of Missouri held that the attendance officer was properly appointed and entitled to his pay.

Kindergarten Schools

A mandatory statute requiring a local board to establish and maintain a kindergarten when petitioned by "the parents" of twenty-five children, more than four and not more than six years of age, was held not to have been complied with in Wisconsin²¹ and, therefore, not mandatory because the petition did not bear the signature of both parents of the children for whose benefit the

18 *De Mateis v. Jones*, (App. Div. Sec. Dept.), 255 N. Y. S. 178 (1932).

19 *State ex rel. Test v. Steenwedel et al.*, (Ind.), 180 N. E. 865 (1932).

20 *Bowman v. Phelps County*, (Mo.), 51 S. W. (2d) 3 (1932).

21 *State ex rel. Mueller et al. v. Common School Board of Joint School Dist. No. 2 of City of Princeton et al.*, (Wis.), 242 N. W. 575 (1932).

kindergarten was desired. This seems like a very strict construction, but represents the growing opposition to so much mandatory school legislation which inflicts new financial burdens upon a community.

Right to Exclude a Pupil or Student for Deficient Scholarship

The court of appeals of Ohio reasserted the doctrine that a student, mentally unable to progress with normal students after passing entrance requirements of a state university, has no right to continue as a student therein, though he does not violate any rules requiring order, decency and decorum. The scholastic standards of Miami University were held not to be unreasonable.²² It is, however, doubtful if such a case would be controlling in relation to the public school system, for unless a pupil is mentally so deficient as to receive no benefit from attendance, he is not only allowed to remain in school, but is often compelled to do so until reaching the age fixed by law.

²² *West v. Board of Trustees of Miami University*, 41 Ohio App. 367, 181 N. E. 144 (1932).